




TEXAS ETHICS COMMISSION



****Overruled, Modified, Clarified, or Superseded****  **Opinion History**

ETHICS ADVISORY OPINION NO. 238

December 9, 1994

Whether Government Code chapter 572 requires a state officer to list assets held for him as a beneficiary of a blind trust on a personal financial disclosure statement. (AOR-267)

The Texas Ethics Commission has been asked to interpret section 572.023 of the Government Code, concerning the content of the personal financial statement state officers are required to file. Gov't Code § 572.021, *et seq.* The financial statement must contain an account of the state officer's financial activity in the preceding year, including the following:

(6) identification by description of all beneficial interests in real property and business entities held or acquired, and if sold, the category of the amount of the net gain or loss realized from the sale;

....

(8) identification of the source and the category of the amount of all income received as beneficiary of a trust and identification of each asset, *if known to the beneficiary*, from which income was received by the beneficiary in excess of \$500.

Gov't Code § 572.023(b)(6), (8) (emphasis added).¹ The requestor asks about the application of these provisions to assets held in a "blind trust" for the benefit of a state officer. By "blindtrust," we understand the requestor to mean a trust used "to give management of one's investments to an outside person over whom the beneficiary has no control." Black's Law Dictionary 1048 (6th ed. 1991). We assume that the beneficiary would also be ignorant of the trust's contents.²

Subsection (b)(8) of Government Code section 572.023 requires a covered beneficiary of a trust to identify an income-producing asset of a trust only if the beneficiary knows the identity of the asset. The statute thus appears to contemplate a state officer's use of a blind trust to manage his or her investments. The requestor notes, however, that subsection (b)(6) of the statute, concerning beneficial interests held or acquired in real property and business entities, does not similarly limit the disclosure requirement to interests whose identity is known to the state officer. Given subsection (b)(6), the requestor asks whether a state officer would be required to list assets held for his benefit in a blind trust, thus defeating the purpose of the trust.

Chapter 572 does not define the term "beneficial interest" as used in section 572.023(b)(6), and the commission has not been asked to interpret the term. It is possible to interpret the term to refer to interests held by one person for the benefit of another, as a trustee holds property for the benefit of a beneficiary. *See* Black's Law Dictionary 107 (6th ed. 1991) ("beneficial interest" as used in trust law).³ Interpreted this way, subsection (b)(6) would appear to conflict with subsection (b)(8). In our opinion subsection (b)(8), which is specifically directed at trust income and assets, prevails over subsection (b)(6) in the case of any conflict in regard to description of assets held in trust for a state officer as beneficiary. Subsection (b)(6) applies to all other interests redounding to the benefit of the state officer held or acquired in real property or business entities.

SUMMARY

In our opinion subsection (b)(8), which is specifically directed at trust income and assets, prevails over subsection (b)(6) in the case of any conflict in regard to a description of assets held in trust for a state officer as beneficiary.

¹ The state officer is also required to give an account of the financial activity of his or her spouse and dependent children if the state officer had actual control over that activity for the preceding calendar year. Gov't Code § 572.023(a). For brevity's sake, we will refer only to the activity of the state officer in this opinion.

² We caution that the commission has no authority to determine whether a "blind trust" of the kind suggested by the requestor is permissible under the Texas law of trusts.

³ We note that Black's Law Dictionary defines "beneficial interest" as used in the characterization of estates to mean an interest a donee, devisee, or legatee takes solely for his own use and benefit, as distinct from taking for the benefit or use of another. Black's Law Dictionary 107 (6th ed. 1991).